IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CIVIL REVISION APPLICATION No 1000 of 1999

For Approval and Signature:

Hon'ble MR.JUSTICE D.P.BUCH

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

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ASHWINBHAI GORDHANABHAI PATEL

Versus

RAMESHBHAI PURSHOTTAMBHAI PATEL

Appearance:

1. Civil Revision Application No. 1000 of 1999

MR RA PATEL for Petitioner No. 1

NOTICE SERVED for Respondent No. 1

MR NAVIN K PAHWA for Respondent No. 2

CORAM : MR.JUSTICE D.P.BUCH

Date of decision: 01/07/2002

ORAL JUDGEMENT

Rule. By consent of the parties, this application is heard and disposed of finally. It appears from the record that the Execution Petition in question was pending for hearing before the Executing Court on

6.2.1999. On that date, the present petitioner of this revision application had submitted an application at Exh.18 stating that he wanted to submit written reply to the application and, therefore, he may be ganted time. A copy of the said application has been placed at Annexure 'C' at page 5 of this application. The learned trial Judge seems to have granted the said application and it appears that the matter was adjourned to 6.3.1999. The said facat is fortified by application of the present respondent dated 12.2.1999 which is placed at Annexure 'E', page 7 wherein the respondent herein had stated that the matter was adjourned to 6.3.1999. This means that on 6.3.1999, Execution Application No.29/98 was posted for hearing. However, order at page 6 - Annexure 'D' shows that the learned Judge had passed order dated 6.2.1999 that the defendant has not submitted any objection and hence possession warrant under Order 21 Rule 35 of the CPC be issued.

2. Once the matter was adjourned to 6.3.1999, there was no question for the Court to pass the aforesaid order issuing possession warrant under Order 21 Rule 35 of the CPC. In that view of the matter, the said order appears to have been passed without hearing the parties and without application of mind. It, therefore, deserves to be quashed and set aside. Learned Advocate for the respondent makes a statement that pursuant to the said order, possession warrant was issued and possession has already been taken over by the present opponent. This would be a dispute between the parties as and when the parties contest the said Execution Petition. However, when the order in question is found to be illegal and without application of mind, it is required to be quashed and set aside. In that view of the matter, by consent of the learned parties, this application is allowed. The order dated 6.2.1999 passed below the aforesaid Execution Petition No.29/98 directing to issue possession warrant under Order 21 Rule 35 of the CPC is ordered to be quashed and set aside. The matter is remanded to the trial court. The trial court will naturally hear the parties and decide the matter if any, before it in accordance with law. Learned Advocate for the petitioner states that the petitioner would like to prefer application for restoration of possession. If such an application is filed, naturally, the Court will deal with and decide the same in accordance with law. Rule is made absolute accordingly. Direct Service is permitted.

1.7.2002 [D P Buch, J.]
msp